

## § 535.101

### Subpart F—Action on Agreements

- 535.601 Preliminary review—rejection of agreements.
- 535.602 Federal Register notice.
- 535.603 Comment.
- 535.604 Waiting period.
- 535.605 Requests for expedited approval.
- 535.606 Requests for additional information.
- 535.607 Failure to comply with requests for additional information.
- 535.608 Confidentiality of submitted material.
- 535.609 Negotiations.

### Subpart G—Reporting and Record Retention Requirements

- 535.701 General requirements.
- 535.702 Agreements subject to Monitoring Report requirements.
- 535.703 Monitoring report for Class A agreements.
- 535.704 Monitoring report for Class B agreements.
- 535.705 Monitoring report for Class C agreements.
- 535.706 Filing of minutes—including shippers' requests and complaints, and consultations.
- 535.707 Other documents.
- 535.708 Retention of records.
- 535.709 Application for waiver.

### Subpart H—Mandatory and Prohibited Provisions

- 535.801 Independent action.
- 535.802 Service contracts.
- 535.803 Ocean freight forwarder compensation.

### Subpart I—Penalties

- 535.901 Failure to file.
- 535.902 Falsification of reports.

### Subpart J—Paperwork Reduction

- 535.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
- APPENDIX A TO PART 535—INFORMATION FORM FOR CLASS A/B AGREEMENTS AND INSTRUCTIONS
- APPENDIX B TO PART 535—INFORMATION FORM FOR CLASS C AGREEMENTS AND INSTRUCTIONS
- APPENDIX C TO PART 535—MONITORING REPORT FOR CLASS A AGREEMENTS AND INSTRUCTIONS
- APPENDIX D TO PART 535—MONITORING REPORT FOR CLASS B AGREEMENTS AND INSTRUCTIONS
- APPENDIX E TO PART 535—MONITORING REPORT FOR CLASS C AGREEMENTS AND INSTRUCTIONS

## 46 CFR Ch. IV (10–1–03 Edition)

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707; 1709–1710, 1712 and 1714–1718; Pub. L. 105–383, 112 Stat. 3411.

SOURCE: 49 FR 45351, Nov. 15, 1984, unless otherwise noted. Redesignated at 64 FR 11240, Mar. 8, 1999.

EDITORIAL NOTE: Nomenclature changes to part 535 appear at 64 FR 23794, May 4, 1999.

### Subpart A—General Provisions

#### § 535.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act (5 U.S.C. 553), sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17 and 19 of the Shipping Act of 1984 (“the Act”), and the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902.

[65 FR 26513, May 8, 2000]

#### § 535.102 Purpose.

This part implements those provisions of the Act which govern agreements by or among ocean common carriers and agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers. This part also sets forth more specifically certain procedures provided for in the Act.

[49 FR 45351, Nov. 15, 1984. Redesignated and amended at 64 FR 11240, 11241, Mar. 8, 1999]

#### § 535.103 Policies.

(a) The Act requires that agreements be processed and reviewed, upon their initial filing, according to strict statutory deadlines. This part is intended to establish procedures for the orderly and expeditious review of filed agreements in accordance with the statutory requirements.

(b) The Act requires that agreements be reviewed, upon their initial filing, to ensure compliance with all applicable provisions of the Act and empowers the Commission to obtain information to conduct that review. This part identifies those classes of agreements which must be accompanied by information submissions when they are first filed, and sets forth the kind of information for each class of agreement

which the Commission believes relevant to that review. Only that information which is relevant to such a review is requested. It is the policy of the Commission to keep the costs of regulation to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

(c) In order to further the goal of expedited processing and review of agreements upon their initial filing, agreements are required to meet certain minimum requirements as to form. These requirements are intended to ensure expedited review and should assist parties in preparing agreements. These requirements as to form do not affect the substance of an agreement and are intended to allow parties the freedom to develop innovative commercial relationships and provide efficient and economic transportation systems.

(d) The Act itself excludes certain agreements from filing requirements and authorizes the Commission to exempt other classes of agreements from any requirement of the Act or this part. In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of agreements from the filing requirements of this part.

(e) Under the new regulatory framework established by the Act, the role of the Commission as a monitoring and surveillance agency has been enhanced. The Act favors greater freedom in allowing parties to form their commercial arrangements. This, however, requires greater monitoring of agreements after they have become effective, to assure continued compliance with all applicable provisions of the Act. The Act empowers the Commission to impose certain recordkeeping and reporting requirements. This part identifies those classes of agreements which require specific record retention and reporting to the Commission and prescribes the applicable period of record retention, the form and content of such reporting, and the applicable time periods for filing with the Commission. Only that information which is necessary to assure that Commission monitoring responsibilities will be fulfilled is requested. It is the policy of

the Commission to keep the costs of regulations to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

(f) The Act requires that conference agreements must contain certain mandatory provisions. Each such agreement must: (1) state its purpose; (2) provide reasonable and equal terms and conditions for admission and readmission to membership; (3) allow for withdrawal from membership upon reasonable notice without penalty; (4) require an independent neutral body to police the conference, if requested by a member; (5) prohibit conduct specified in sections 10(c)(1) or 10(c)(3) of the Act; (6) provide for a consultation process; (7) establish procedures for considering shippers' requests and complaints; and (8) provide for independent action. Parties to conference agreements are free to develop their own mandatory provisions in accordance with the requirements of section 5(b) of the Act.

(g) An agreement filed under the Act must be clear and definite in its terms, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations and regulate the relationships among the agreement members.

(h) In order to promote competitive and efficient transportation and a greater reliance on the marketplace, the Act places limits on carriers' agreements regarding service contracts. Carriers may not enter into an agreement to prohibit or restrict members from engaging in contract negotiations, may not require members to disclose service contract negotiations or terms and conditions (other than those required to be published), and may not adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate and enter into contracts. However, agreement members may adopt voluntary guidelines covering the terms and procedures of members' contracts.

[49 FR 45351, Nov. 15, 1984, as amended at 61 FR 11573, Mar. 21, 1996; 64 FR 11241, Mar. 8, 1999]